

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 27, 2024**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ANNETTE HERUP,

Plaintiff,

v.

SGL CARBON FIBERS AMERICA  
LLC d/b/a SGL COMPOSITES,  
LLC, a foreign limited liability  
company,

Defendant.

No. 2:24-CV-00132

STIPULATED PROTECTIVE  
ORDER

**ECF No. 7-1**

Before the Court is the Parties' Stipulated Protective Order. ECF No. 7-1.  
On June 27, 2024, the Court held a telephonic scheduling conference. The parties  
requested the entry of a stipulated protective order. The Court has reviewed the  
record and finds good cause to enter the proposed order.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulated Protective Order, **ECF No. 7-1**, is  
**GRANTED.**

2. The following Protective Order shall apply to this case:

**PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with CR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: plaintiff’s medical records, plaintiff’s financial records, defendant’s records pertaining to plaintiff’s confidential identifying information, defendant’s records pertaining to other employees of defendant and defendant’s SGL affiliated companies, defendant’s confidential proprietary information and documents (including but not limited to trade secrets), and defendant’s confidential financial information and documents.

1           3.     SCOPE

2           The protections conferred by this agreement cover not only confidential  
3 material (as defined above), but also (1) any information copied or extracted from  
4 confidential material; (2) all copies, excerpts, summaries, or compilations of  
5 confidential material; and (3) any testimony, conversations, or presentations by  
6 parties or their counsel that might reveal confidential material.

7           However, the protections conferred by this agreement do not cover  
8 information that is in the public domain or becomes part of the public domain  
9 through trial or otherwise.

10          4.     ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

11           4.1    Basic Principles. A receiving party may use confidential  
12 material that is disclosed or produced by another party or by a non-party in  
13 connection with this case only for prosecuting, defending, or attempting to  
14 settle this litigation. Confidential material may be disclosed only to the  
15 categories of persons and under the conditions described in this agreement.  
16 Confidential material must be stored and maintained by a receiving party at  
17 a location and in a secure manner that ensures that access is limited to the  
18 persons authorized under this agreement.

19           4.2    Disclosure of “CONFIDENTIAL” Information or Items.

20          Unless otherwise ordered by the court or permitted in writing by the

1 designating party, a receiving party may disclose any confidential material  
2 only to:

3 (a) the receiving party's counsel of record in this action, as  
4 well as employees of counsel to whom it is reasonably necessary to  
5 disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house  
7 counsel) of the receiving party (and, in the case of defendant, also of  
8 its SGL affiliated companies) to whom disclosure is reasonably  
9 necessary for this litigation, unless the parties agree that a particular  
10 document or material produced is for Attorney's Eyes Only and is so  
11 designated;

12 (c) experts and consultants to whom disclosure is reasonably  
13 necessary for this litigation and who have signed the  
14 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (d) the court, court personnel, and court reporters and their  
16 staff;

17 (e) copy or imaging services retained by counsel to assist in  
18 the duplication of confidential material, provided that counsel for the  
19 party retaining the copy or imaging service instructs the service not to  
20

1 disclose any confidential material to third parties and to immediately  
2 return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom  
4 disclosure is reasonably necessary and who have signed the  
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
6 otherwise agreed by the designating party or ordered by the court.

7 Pages of transcribed deposition testimony or exhibits to depositions  
8 that reveal confidential material must be separately bound by the court  
9 reporter and may not be disclosed to anyone except as permitted under  
10 this agreement;

11 (g) the author or recipient of a document containing the  
12 information or a custodian or other person who otherwise possessed or  
13 knew the information.

14 4.3 Filing Confidential Material. Before filing confidential material  
15 or discussing or referencing such material in court filings, the filing party  
16 shall confer with the designating party to determine whether the designating  
17 party will remove the confidential designation, whether the document can be  
18 redacted, or whether a motion to seal or stipulation and proposed order is  
19 warranted. The party designating material as confidential shall have the  
20 burden of moving to seal.

1           5.     DESIGNATING PROTECTED MATERIAL

2                 5.1     Exercise of Restraint and Care in Designating Material for  
3     Protection. Each party or non-party that designates information or items for  
4     protection under this agreement must take care to limit any such designation  
5     to specific material that qualifies under the appropriate standards. The  
6     designating party must designate for protection only those parts of material,  
7     documents, items, or oral or written communications that qualify, so that  
8     other portions of the material, documents, items, or communications for  
9     which protection is not warranted are not swept unjustifiably within the  
10    ambit of this agreement.

11                Mass, indiscriminate, or routinized designations are prohibited.  
12    Designations that are shown to be clearly unjustified or that have been made  
13    for an improper purpose (e.g., to unnecessarily encumber or delay the case  
14    development process or to impose unnecessary expenses and burdens on  
15    other parties) expose the designating party to sanctions.

16                If it comes to a designating party's attention that information or items  
17    that it designated for protection do not qualify for protection, the designating  
18    party must promptly notify all other parties that it is withdrawing the  
19    mistaken designation.  
20

1 Any documents designated as “Confidential” and produced in  
2 discovery (formal or informal) prior to the date of this protective order shall  
3 be deemed confidential in accordance with this protective order. If any  
4 information is initially undesignated and a Party later determines that the  
5 information is confidential, it shall notify the other Parties of the new  
6 Confidential Information designation. The new designation will be effective  
7 upon receipt of such notification.

8 5.2 Manner and Timing of Designations. Except as otherwise  
9 provided in this agreement (see, e.g., second paragraph of section 5.2(b)  
10 below), or as otherwise stipulated or ordered, disclosure or discovery  
11 material that qualifies for protection under this agreement must be clearly so  
12 designated before or when the material is disclosed or produced.

13 (a) Information in documentary form: (e.g., paper or  
14 electronic documents and deposition exhibits, but excluding  
15 transcripts of depositions or other pretrial or trial proceedings), the  
16 designating party must affix the word “CONFIDENTIAL” to each  
17 page that contains confidential material. If only a portion or portions  
18 of the material on a page qualifies for protection, the producing party  
19 also must clearly identify the protected portion(s) (e.g., by making  
20 appropriate markings in the margins).

1 (b) Testimony given in deposition or in other pretrial  
2 proceedings: the parties and any participating non-parties must  
3 identify on the record, during the deposition or other pretrial  
4 proceeding, all protected testimony, without prejudice to their right to  
5 so designate other testimony after reviewing the transcript. Any party  
6 or non-party may, within fifteen days after receiving the transcript of  
7 the deposition or other pretrial proceeding, designate portions of the  
8 transcript, or exhibits thereto, as confidential. If a party or non-party  
9 desires to protect confidential information at trial, the issue should be  
10 addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a  
12 prominent place on the exterior of the container or containers in which  
13 the information or item is stored the word "CONFIDENTIAL." If  
14 only a portion or portions of the information or item warrant  
15 protection, the producing party, to the extent practicable, shall identify  
16 the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an  
18 inadvertent failure to designate qualified information or items does not,  
19 standing alone, waive the designating party's right to secure protection under  
20 this agreement for such material. Upon timely correction of a designation,



1 the receiving party must make reasonable efforts to ensure that the material  
2 is treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a  
5 designation of confidentiality at any time. Unless a prompt challenge to a  
6 designating party's confidentiality designation is necessary to avoid  
7 foreseeable, substantial unfairness, unnecessary economic burdens, or a  
8 significant disruption or delay of the litigation, a party does not waive its  
9 right to challenge a confidentiality designation by electing not to mount a  
10 challenge promptly after the original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to  
12 resolve any dispute regarding confidential designations without court  
13 involvement. Any motion regarding confidential designations or for a  
14 protective order must include a certification, in the motion or in a declaration  
15 or affidavit, that the movant has engaged in a good faith meet and confer  
16 conference with other affected parties in an effort to resolve the dispute  
17 without court action. The certification must list the date, manner, and  
18 participants to the conference. A good faith effort to confer requires a face-  
19 to-face meeting or a telephone conference.  
20

1           6.3   Judicial Intervention. If the parties cannot resolve a challenge  
2       without court intervention, the designating party may file and serve a motion  
3       to retain confidentiality under Local Civil Rule 7 (and in compliance with  
4       Local Civil Rule 5(g), if applicable).<sup>1</sup> The burden of persuasion in any such  
5       motion shall be on the designating party. Frivolous challenges, and those  
6       made for an improper purpose (e.g., to harass or impose unnecessary  
7       expenses and burdens on other parties) may expose the challenging party to  
8       sanctions. All parties shall continue to maintain the material in question as  
9       confidential until the court rules on the challenge.

10       7.    PROTECTED MATERIAL SUBPOENAED OR ORDERED  
11       PRODUCED IN OTHER LITIGATION

12       If a party is served with a subpoena or a court order issued in other litigation  
13       that compels disclosure of any information or items designated in this action as  
14       “CONFIDENTIAL,” that party must:

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15  
16  
17       <sup>1</sup> The parties include this language in their proposed order. The Court presumes  
18       the parties refer to the Western District of Washington’s Local Rules. For the  
19       purposes of this Order, the Western District’s LCR 5(g) and 7 are incorporated by  
20       reference.

1 (a) promptly notify the designating party in writing and include a  
2 copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena  
4 or order to issue in the other litigation that some or all of the material  
5 covered by the subpoena or order is subject to this agreement. Such  
6 notification shall include a copy of this agreement; and

7 (c) cooperate with respect to all reasonable procedures sought to be  
8 pursued by the designating party whose confidential material may be  
9 affected.

10 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
12 confidential material to any person or in any circumstance not authorized under  
13 this agreement, the receiving party must immediately (a) notify in writing the  
14 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve  
15 all unauthorized copies of the protected material, (c) inform the person or persons  
16 to whom unauthorized disclosures were made of all the terms of this agreement,  
17 and (d) request that such person or persons execute the “Acknowledgment and  
18 Agreement to Be Bound” that is attached hereto as Exhibit A.

19 9. INADVERTENT PRODUCTION OF PRIVILEGED OR  
20 OTHERWISE PROTECTED MATERIAL

1 When a producing party gives notice to receiving parties that certain  
2 inadvertently produced material is subject to a claim of privilege or other  
3 protection, the obligations of the receiving parties are those set forth in Federal  
4 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
5 whatever procedure may be established in an e-discovery order or agreement that  
6 provides for production without prior privilege review. The parties agree to the  
7 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

8 10. NON TERMINATION AND RETURN OF DOCUMENTS

9 Within 60 days after the termination of this action, including all appeals,  
10 each receiving party must return all confidential material to the producing party,  
11 including all copies, extracts and summaries thereof. Alternatively, the parties may  
12 agree upon appropriate methods of destruction.

13 Notwithstanding this provision, counsel are entitled to retain one archival  
14 copy of all documents filed with the court, trial, deposition, and hearing transcripts,  
15 correspondence, deposition and trial exhibits, expert reports, attorney work  
16 product, and consultant and expert work product, even if such materials contain  
17 confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in  
19 effect until a designating party agrees otherwise in writing or a court orders  
20 otherwise.

1           **IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid. 502(d), the  
2 production of any documents in this proceeding shall not, for the purposes of this  
3 proceeding or any other federal or state proceeding, constitute a waiver by the  
4 producing party of any privilege applicable to those documents, including the  
5 attorney-client privilege, attorney work-product protection, or any other privilege  
6 or protection recognized by law.

7           **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
8 Order and provide copies to the parties.

9                   DATED June 27, 2024.

10                               s/Mary K. Dimke  
11                               MARY K. DIMKE  
12                               UNITED STATES DISTRICT JUDGE  
13  
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EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of Washington on \_\_\_\_\_, 2024, in the case of *Annette Herup v. SGL Carbon Fibers America LLC, dba SGL Composites, LCC*, Case No. 2:24-cv-00132-MKD. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2024, at \_\_\_\_\_.  
(City and State)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Company and Title